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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable Robert E. Hood, Circuit Court Judge

Case No. 2018-CP-40-01318
Appellate Case No. 2019-001811

Best Choice Roofing & Home Improvement, Inc. . . . . Appellant,

v.

Tyler Woods. . . . . Respondent.

INITIAL BRIEF OF RESPONDENT

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III. Did the trial court rule correctly in finding that Respondent would be prejudiced if Appellant was allowed to amend his Complaint to abandon all original claims and substitute an entirely new cause of action?

STATEMENT OF THE CASE

Respondent Tyler Woods ("Woods") is a roofer who has worked in the roofing industry for over ten years. (R.p.____; Answer and Countercl. ¶ 27.) Appellant Best Choice Roofing & Home Improvement, Inc. is a roofing services company. (R.p._____; Resp. Memo in Supp. of Mot. for Summ. J.) On or about April 17, 2017, Woods began working as a sales manager for Appellant's Marietta, Georgia location. (R.p.____; Answer and Countercl., ¶¶ 29-30.) He had worked previously for the company, but in 2017, he relocated to Georgia for this new position. (R.p.___; Answer and Countercl. ¶¶ 28, 29.) He and his wife were expecting their first child and wanted a stable place to reside. (R.p.___; Answer and Countercl. ¶ 40.)

On April 21, 2017, Appellant asked Woods to sign an Employment Agreement to continue his employment with Appellant. (R.p.____; Compl., Ex. A BCR Employment Agreement.) A Non-Competition and Confidentiality Clause within the Employment Agreement provided that Woods was not allowed to "directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner" with a business similar to Appellant "for a period of ONE (1) year and within 100 miles from *the present location* of [Appellant's] business." (R.p.____; *Id.*, Section 9 (emphasis added).) Violation of the non-competition clause could result in the payment of $15,000.00 in liquidated damages. (*Id.*) The Employment Agreement further provided that the responsibilities and duties granted to Woods under the Employment Agreement would be rendered in Marietta, Georgia. (R.p.____; *Id.*, Section 4.)

Woods left his position with Appellant on or about April 29, 2017 after a dispute about suitable family housing promised by Appellant. (R.p.____; Answer and

Counterclaim, ¶¶ 39-42.) Woods relocated himself and his young family to Columbia, South Carolina. (R.p.____; *Id.* at ¶ 44.) Shortly thereafter, Woods began working with Premiere Roofing, LLC (Premiere) in Irmo, South Carolina. (R.p.____; *Id.* ¶ 45.) Premiere provides roofing services in the Midlands of South Carolina, including the cities of Irmo, Columbia, Newberry, Sumter, and Orangeburg. (*See* PREMIERE ROOFING, http://www.premiereroofingcolumbia.com (last visited Apr. 14, 2020).) Irmo, South Carolina is about 193 miles from Best Choice's location in Marietta, Georgia. (R.p._____; Answer and Counterclaim, ¶ 46.)

On November 6, 2017, Appellant sent an unfounded cease-and-desist letter to Woods's new South Carolina employer, Premiere, on the grounds that Woods allegedly violated the non-competition provision of his employment agreement with Appellant by working for a competitor allegedly within 100 miles of Appellant's locations. (R.p____; *Id.*, ¶ 47.) This caused Woods's South Carolina employer to terminate Woods. (R.p.____; *Id.* ¶ *48*.) On March 8, 2018, Appellant filed a Complaint in the Richland County Court of Common Pleas alleging that Woods breached the non-compete provision of his employment agreement by working for a competitor within 100 miles of Appellant's location. (R.p.____; Compl.) On June 11, 2018, Woods filed his Motion to Dismiss the Complaint. (R.p.____; Mot. to Dismiss.) On the same date, Woods filed his Answer and Counterclaim, counterclaiming against Appellant for intentional interference with a business relationship and for filing a frivolous claim under the South Carolina Frivolous Civil Proceedings Sanctions Act ("SCFCPSA"), S.C. Code Ann. § 15-36-10 (1976). (R.p._____; Answer and Counterclaims.)

Woods served initial interrogatories and requests for production on Appellant on May 30, 2018. (R.p.____; Mot. to Compel.) In these discovery requests, Woods specifically requested that Appellant "[d]escribe the consideration [Appellant] contends supports the employment contract." (R.p.____; *Id.* at Int. 12.) Appellant did not initially respond to these requests and Woods filed a Motion to Compel Discovery Responses on September 7, 2018. (R.p.____; Mot. to Compel.) Ultimately, on October 30, 2018, Plaintiff responded to the Interrogatories and asserted that Appellant had an Augusta location. (R.p.___; Tr. of Hr'g held Jan. 30, 2019, p. 8.) In the meantime, Woods served Requests to Admit on Appellant on July 24, 2018, requesting Appellant admit that Woods never worked for Premiere or another roofer within 100 miles of any of Appellant's locations. (R.p.___; Notice of Mot. and Mot. to Deem Admitted Requests for Admission Not Responded to By Pl.) On October 3, 2018, the trial court ordered Appellant to respond to Woods's interrogatories and requests for production within 10 days or its Complaint would be dismissed. (R.p.____; Form 4 Order.)

On November 16, 2018, Woods filed a Motion to Deem Admitted Requests for Admission Not Responded To, as Appellant had not responded to Woods's Requests for Admission within the required time under the Rules of Civil Procedure. (R.p.___; Mot. to Deem Admitted Requests for Admission not Responded to By Pl.) Ultimately, Appellant answered and admitted that Appellant had no locations in Augusta, Georgia or Charlotte, North Carolina. (R.p.___; Tr. of Hr'g, p. 8.)

On December 17, 2018, nine months after filing the Complaint, Appellant moved the trial court for permission to amend the Complaint pursuant to Rule 15, SCRCP, "to conform the allegations to the facts of the case," and totally abandon all original causes

of action in favor of an action sounding in fraud for return of an alleged "relocation" advance. (R.p.____; Mot. to Am. Compl.) The next day, on December 18, 2018, Woods moved the trial court for summary judgment on the claims and counterclaims in the case. (R.p.____; Mot. for Summ. J.)

On January 30, 2019, Woods filed his memorandum in opposition to Appellant's motion to amend the Complaint. (R.p.____; Mem. In Opp. to Pl.'s Mot. to Amend the Compl.) In this memorandum, Woods argued that Woods would be prejudiced if Appellant was allowed to amend its Complaint to abandon all original causes of action in favor of an entirely new cause of action. (R.p.____; *Id.*) Woods argued that since the proposed Amended Complaint is so drastically different from the original, Woods had no notice of the new issues and no opportunity to refute the new issues. (R.p.____; *Id.*) Woods further argued that since Appellant had notice of the alleged claims in the proposed Amended Complaint at the time it filed its original Complaint and yet chose not to include them in its original Complaint or in a timely motion to amend the Complaint, Woods did not have notice of the claims and did not have the opportunity to refute them. (R.p.____; *Id.* p. 2.) Finally, Woods argued that leave to amend the Complaint should not be granted because the motion to amend was filed solely in an attempt to avoid liability for interfering with Woods's employment and for filing a frivolous lawsuit. (R.p.____; *Id.* p. 4.)

On January 30, 2019, the trial court heard Appellant's Motion to Amend the Complaint and Woods's Motions for Summary Judgment and Motion to Deem Admitted Discovery Requests Not Responded To. (R.p.____; Tr. of Hr'g held Jan. 30, 2019.) At this hearing, Appellant consented to Woods's motion for summary judgment as Appellant

recognized that it is undisputed that Woods worked for his South Carolina employer in Irmo, SC, approximately 193 miles from Marietta, GA, where he worked for Appellant and that Appellant had no locations within 100 miles of Irmo, SC; which is not a violation of Woods's employment agreement with Appellant. (R.p.____; *Id.* p. 10-11.) Because there was no longer any doubt Woods had not breached his employment agreement with Appellant, Woods withdrew his Motion to Deem Admitted Discovery Requests Not Responded To at the hearing. (R.p.____; *Id.* p. 3.)

At the hearing on January 30, 2019, the trial court also heard arguments regarding Appellant's Motion to Amend. Appellant's counsel argued that Woods would not be prejudiced by an order allowing Appellant to amend its Complaint because the matter was still in "the written discovery stage." (R.p.____; *Id.* p. 5.) Appellant's counsel stated that through attempting to respond to Respondent's written discovery requests, he learned from Appellant, his own client, that the original complaint was baseless and about the existence of the allegedly purloined "advanced payment" which is the subject of Appellant's proposed Amended Complaint. (R.p.____; *Id.*)

Woods's counsel argued that the reason that the stage of litigation was stalled in written discovery was because Appellant refused to cooperate in responding to discovery and in the scheduling of depositions and mediation. (R.p.___; *Id.* p. 14.) Woods's counsel also argued that Woods would indeed be prejudiced if Appellant were to be granted leave to amend its Complaint because Woods had already defended himself against a baseless lawsuit for almost 10 months and would lack notice and opportunity to refute the new claims. (R.p.____; *Id.* p. 13-14.)

On February 19, 2019, the trial court issued its Order denying Appellant's Motion to Amend the Complaint and granting summary judgment in favor of Woods on all claims and counterclaims in the case. (R.p.____; Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot. to Am. Compl.) On February 28, 2019, Appellant filed a Motion to Reconsider, Alter, or Amend the trial court's February 19, 2019 Order, requesting that the trial court alter its order to reflect the fact that Appellant did not consent to summary judgment being ordered against it on the pending counterclaims, and requesting the trial court reconsider its ruling on Appellant's Motion to Amend the Complaint. (R.p.____; Mot. to Recons., Alter, or Am.)

On March 20, 2019, the trial court issued an amended Order, again finding in favor of summary judgment for Woods on the claims in the Complaint and denying Appellant's Motion to Amend the Complaint, but reversing its decision on summary judgment as to Woods's counterclaims, ordering the clerk of court to move Woods's counterclaims forward on the trial docket. (R.p.____; Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot. to Am. Compl.)

In this amended Order, the trial court found that Appellant is not entitled "to abandon all of its original allegations and to plead previously unraised allegations," and that Woods would be prejudiced if Appellant was granted leave to amend the Complaint. (R.p.____; *Id.* p. 2.)

On March 28, 2019, Appellant filed a Revised Motion to Reconsider, Alter, or Amend the trial court's March 20, 2019 Order, requesting again that the trial court grant Appellant's Motion to Amend the Complaint. (R.p.____; Mot. to Recons., Alter, or Am.) Notably, consistent with the fact that Appellant consented to summary judgment, Appellant did not request that the trial court reconsider, alter, or amend its grant of

summary judgment in Woods's favor in its Revised Motion to Reconsider, Alter, or Amend. (R.p.____; *Id*.)

On October 22, 2019, the trial court issued its Order denying Appellant's Revised Motion to Reconsider, Alter, or Amend the Complaint. (R.p.____; Order Denying Revised Mot. to Recons.) Appeal of this Order followed. (R.p.____; Notice of Appeal.)

STANDARD OF REVIEW

"It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and that the party opposing the motion has the burden of establishing prejudice." *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 22, 431 S.E.2d 587, 590 (1993). The appellate courts "defer to the [trial court's] denial [of a motion to amend a complaint] if any adequate reason for the decision is apparent on the record." *Villanueva v. United States*, 662 F.3d 124, 127 (1st Cir. 2011.)

ARGUMENT

I. The trial court rightfully recognized that it did not have the authority to allow Appellant to abandon all original claims and replace the Complaint with an entirely new Complaint.

A trial court has no authority to allow a party to amend a pleading with an "amendment" which substitutes the original complaint with a "wholly unrelated cause of action." *Greenville Cmty. Hotel Corp. v. Alexander Smith, Inc.*, 230 S.C. 239, 95 S.E.2d 262 (1956). "[T]he term 'amendment' connotes alteration, improvement or correction, and negates the destruction or elimination of the original," therefore allowing an "amendment" which does destroys the original is outside the trial court's authority. *Mylin v. Allen-White Pontiac, Inc.*, 281 S.C. 174, 180, 314 S.E.2d 354, 357–58 (Ct. App. 1984).

In *Greenville Cmty. Hotel Corp.*, the plaintiff sued the defendant for breach of warranty regarding allegedly defective carpeting it had purchased from the defendant for one of its hotels in Greenville. *See Greenville Cmty. Hotel Corp. v. Alexander Smith, Inc.*, 230 S.C. 239, 241-243 (1956). The plaintiff then amended its complaint with the trial court's permission to replace the allegations regarding the carpeting to refer to carpeting purchased from the defendant for a different hotel owned by the plaintiff. *Id*. at 243-244. The South Carolina Supreme Court held that while the trial court has the power to allow amendments when a plaintiff makes the mistake of "supposing one of his rights has been invaded in a transaction" and then discovers another or different right was invaded, it cannot allow amendments to replace one lawsuit with another. *Id.* at 245.

As in *Greenville Cmty. Hotel Corp.,* although the parties are the same, the transactions upon which these two complaints are based are wholly unrelated. Appellant requested that the trial court allow it to abandon all original claims in its Complaint and substitute different facts and a different cause of action. (R.p.____; Mot. to Am. Compl.) The original Complaint contained a single cause of action for breach of the Employment Agreement between Woods and Appellant. (R.p.____; Compl.) The proposed Amended Complaint totally abandons this cause of action and replaces it with allegations sounding in fraud regarding a single $2500.00 "relocation" payment made by Appellant to Woods. (R.p.____; Mot. to Am. Compl.) The proposed amendment to the Complaint would not have improved, altered, or corrected the Complaint, but would destroy the original Complaint, and the trial court correctly determined that Appellant was not entitled to the amendment. The trial court simply did not have the authority to allow the proposed "amendment."

Therefore, it was proper for the trial court to refuse to allow Appellant to amend its Complaint as requested, and the trial court's Order should be upheld.

II. This Court lacks jurisdiction over this Appeal because the Order on Appeal is an interlocutory order.

Even if the trial court had the authority to allow Appellant to replace its Complaint with a wholly unrelated Complaint, the trial court's order is not immediately appealable because it is an interlocutory order. Appellant appeals the Court of Common Pleas' October 22, 2019 Order, which denied Appellant's Motion to Reconsider the trial court's order denying Appellant its Motion to Amend the Complaint. (R.p.___; Notice of App.) Since this order is not immediately appealable because it is an interlocutory order, this Appeal should be dismissed for lack of jurisdiction.

The jurisdiction of the Court of Appeals "is appellate only, and the [C]ourt shall apply the same scope of review that the Supreme Court [of South Carolina] would apply in a similar case." S.C. Code Ann. § 14-8-200 (Supp. 2013).

Section 14-3-330 of the South Carolina Code (1976 & Supp. 2013) sets forth the scope of the Court of Appeals' appellate jurisdiction, which does not include interlocutory orders unless certain exceptions apply. S.C. Code Ann. § 14-3-330. The only circumstances under which an interlocutory order is immediately appealable are if the order:

> (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action;
> (b) grants or refuses a new trial; or,
> (c) strikes out an answer or any part thereof or any pleading in any action.

Baldwin Const. Co. v. Graham, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). The denial of a motion to amend a pleading is not immediately appealable because it is not a

ruling on the substantive contents of the pleading and does not end the action or strike a pleading, it merely refuses to allow a pleading's filing. *Id.*

Here, Appellant's action ended on March 20, 2019, when the trial court issued its order granting summary judgment to Woods on the claims in the Complaint, but Respondent's counterclaims continue. (R.p.____; Order Granting Summ. J. Against Pl. and Den. Pl.'s Mot. to Am.) Appellant did not move the trial court to reconsider its grant of summary judgment in favor of Woods on Appellant's claims, nor does Appellant seek to appeal said grant of summary judgment to this Court. (R.p.____; Mot. to Am., Notice of App.) Appellant merely moved the trial court to reconsider its denial of Appellant's motion to amend its Complaint to abandon all of its original claims and replace them with new and unrelated claims. (R.p.____; Mot. to Recons., Alter, or Am Order.) Now, Appellant appeals the trial court's October 22, 2019 Order which denied Appellant reconsideration of the trial court's denial of Appellant's request to amend its Complaint. (R.p.____; *Id*.) As in *Baldwin*, this Order is interlocutory and does not end the action; it merely denies the Appellant the opportunity to amend a pleading. (R.p.____; *Id*.) Therefore, the trial court's October 22, 2019 Order is not immediately appealable, and this Court should dismiss Appellant's appeal of said Order with prejudice.

III. The trial court ruled correctly in finding that Woods would be prejudiced if Appellant was allowed to amend its Complaint to abandon all original claims and substitute an entirely new cause of action.

If this Court finds that the trial court had the authority to allow Appellant to abandon its original Complaint and replace it with a wholly unrelated Complaint, and if this Court finds that the October 22, 2019 Order is immediately appealable, then this Appeal should still be denied because the trial court did not abuse his discretion in finding that Appellant

should not be allowed to amend his Complaint to abandon all original claims and substitute an entirely new cause of action.

Per Rule 15(a), SCRCP, once 30 days has passed after the filing of a pleading, "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." "Prejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action." *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994).

A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) (internal citation omitted). The appellate courts "defer to the [trial court's] denial [of a motion to amend a complaint] if any adequate reason for the decision is apparent on the record." *Villanueva v. United States*, 662 F.3d 124, 127 (1st Cir. 2011.)

The trial court here found that Woods would be prejudiced if Appellant was allowed to abandon all his previous claims in favor of an entirely new cause of action based on entirely different facts. (R.p.____; Order Granting Summ. J. Against Pl. and Den. P.'s Mot. to Am. Compl., p. 2.) As required under the law, trial court based this ruling upon the evidence, the pleadings, and the parties' arguments. (R.p.____; *Id.*, p. 1.)

Appellant incorrectly argues that the trial court's decision was in error because in finding that Woods would be prejudiced, the trial court "failed to show that Woods would lack either notice or an opportunity to refute [Appellant's] claims." Initial Br. of Appellant,

p. 3. Appellant argues that because "the parties had not engaged in any discovery other than written discovery, had not mediated the case and the case was not on any jury trial dockets as of [Appellant's] filing of its Motion to Amend, it cannot be argued that Woods would not have notice of the amended claims and an opportunity to refute them." Initial Br. of Appellant, p. 3. This is a misstatement of the law.

As stated above, prejudice can occur when an amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail. *Ball,* 314 S.C. 272, 275 (Ct. App. 1994). To prevail in the original Complaint, Woods was required to show that he did not breach the non-competition provision in the Employment Agreement. Woods was able to do so by proving that he did not work within 100 miles of Appellant's location after he left Appellant's employ. (R.p.____; Mem. In Supp of Summ. J.)

In contrast, Appellant's proposed Amended Complaint included three causes of action, all involving the Woods's intentions towards a $2500.00 "relocation fee." (R.p.____; Mot. to Am. Compl.) To prevail in this amended action, Woods would have needed to produce evidence regarding his acceptance of this alleged relocation advance, his move to Georgia, and the facts surrounding his decision to leave Appellant's employ. Since this is an entirely new theory of the case and entirely separate evidence from that which was required to prevail in the Complaint, Woods would have been prejudiced if the proposed Amended Complaint was allowed.

As Appellant argued before the trial court, before Appellant filed its Motion to Amend, Woods had been vigorously defending the original Complaint's solitary, unfounded claim for more than nine months. (R.p.____; Notice of App., p. 14.) While

Appellant argues that the parties had not engaged in any discovery other than written discovery and have not mediated the case, as Woods pointed out before the trial court, Woods had tried to schedule both mediation and depositions with Appellant and it was *Appellant* who delayed the discovery and mediation process. (R.p.____; *Id.*) There were also six motions filed, heard, or resolved during that time period. (R.p.___; Tr. of Hr'g held Jan. 30, 2019, p. 8.)

While the trial court stopped short of finding that Appellant's attempt to amend its Complaint at this late stage was in bad faith, there is evidence in the record that this is the case. As Woods argued in his Memorandum in Opposition to Appellant's Motion to Amend the Complaint, Appellant filed its Motion to Amend the Complaint to attempt to escape liability to Woods for filing a baseless lawsuit. (R.p.____; Mem. In Opp. to Appellant's Mot. to Am. the Compl., p. 4.) As stated above, Appellant filed a Complaint which it eventually agreed was utterly unfounded (after its hand was forced through Woods's discovery requests and motions), and Woods has counterclaimed for frivolous proceedings sanctions. (R.p.____; Answer and Countercl., ¶ 51-54.) Should the Complaint be amended to abandon all of the frivolous, unfounded claims which formed the basis for this counterclaim, Woods could lose its right to recover on its counterclaim. This alone is enough to show that the Motion to Amend was prejudicial and filed in bad faith. Recall, Appellant caused Woods to lose his job in Irmo through a meritless cease and desist letter as well.

Appellant's counsel admitted before the trial court that the Complaint was drafted on "bad facts" he received third-hand from another attorney. (R.p.____; Tr. of Hr'g held Jan. 30, 2019, p. 4.) Appellant's counsel also stated that it was only "through the

discovery process," that he learned that the original Complaint was utterly baseless, and that Woods had allegedly received $2500.00 as a relocation fee from Appellant. (R.p.____; *Id.* pp. 4-5.) Appellant's contention that it only learned that its claim was unfounded "through the discovery process" obfuscates the fact that it was only through Appellant's forced investigation into the locations and operations of its own business that it realized its Complaint was unfounded.

Appellant should not be excused from filing a baseless Complaint and by its replacement with a proposed Amended Complaint containing entirely new allegations, which are more appropriate for consideration in front of a magistrate. In addition, Appellant knew when it filed its Complaint what monies it had paid Woods $2500.00, yet it made no mention of those funds until it became clear that it had filed a completely baseless Complaint and that Woods's counterclaims could result in sanctions.

The trial court here had all of the above information in front of it when it weighed whether Woods would be prejudiced if Appellant was allowed to abandon all of its original claims in favor of a brand-new complaint. The trial court used its discretion to find that prejudice would occur if amendment was allowed. The trial court did not abuse this discretion, and, therefore, its ruling should be upheld.

CONCLUSION

Because denial of a motion to amend pleadings is not immediately appealable, this Court lacks jurisdiction to consider Appellant's appeal of the circuit court's October 22, 2019 Order. In addition, even if this Court had jurisdiction to consider this appeal, the trial court did not abuse its discretion in denying the motion to amend the pleadings to replace the Complaint with an entirely new Complaint because the trial court did not have the

authority to grant the amendment and because amendment would be contrary to Rule 15 of the South Carolina Rules of Civil Procedure. Accordingly, Woods respectfully moves for this Court to dismiss this Appeal with prejudice or rule in favor of Respondent Woods on the merits of the Appeal.

Respectfully submitted,

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